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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,372	09/14/2005	Bart Van Rompaey	FR030029	3469

24737 7590 10/04/2010
PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

EXAMINER

SASINOWSKI, ANDREW

ART UNIT	PAPER NUMBER
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2627

MAIL DATE	DELIVERY MODE
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10/04/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/549,372	Applicant(s) VAN ROMPAEY ET AL.	
	Examiner ANDREW J. SASINOWSKI	Art Unit 2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

In view of the Reply Brief filed on 5/17/2010, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 - 4, 8 – 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshimoto et. al.

Regarding claim 1, Yoshimoto teaches:

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- a data carrier (**figure 21**) comprising a first area (**O-ROM**) and a second area (**R/W**) comprising a rewritable material (**as indicated, R/W**),
- said first area being defined as a read-only area (**See O-Rom in figure 20. Also, O-ROM is an embossed type, see col.1, lines 56-58 and col. 15, lines 9-10**) by type information (**disk structure management table shown in figure 20**) recorded on said data carrier in an un-erasable way (**see col.14, last line through line 15, line 2, which teaches that “the disk structure management table is provided at the head of the defect management region (at the head of the user zone”. Note that information at header is inherently un-erasable) in a type are (col.15, lines 1-2: “at the head of the defect management region (at the head of the user zone)”**) which is different from said first area (as noted above, the first area corresponds to O_ROM in figure 20)

Regarding claim 2, Yoshimoto also teaches:

- Wherein said first area and said second area are being parts of a same layer of said data carrier [**claim 1, note that each layer has both 1st and 2nd areas**]

Regarding claim 3, Yoshimoto also teaches:

- said data carrier comprising a central part [**fig. 21, inner ring**],

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- the first area being nearer to said central part than the second area [**fig. 21, note O-Rom area is closer to the inner ring than the R/W area**] for recording content by a manufacturer [**col. 1, lines 57 – 59, note O-Rom area contains data embossed by manufacturer**] of the data carrier and the second area is for recording data by a user of the data carrier [**col. 1, lines 53 – 55, note R / W is for “writing and rewriting as desired”**].

Regarding claim 4, Yoshimoto teaches:

- said type information recorded by means of pits and lands [**note disk structure management table shown in figure 20 is provided at the head of the defect management region, and col. 7, lines 56 – 57, “The header fields 4 are in the form of pits in the land parts”**]

Regarding claim 8, Yoshimoto also teaches:

- wherein the type information include location of the first area [**fig. 20, ‘O-ROM’ area indicated by zone number**]

Regarding claims 9, Yoshimoto also teaches:

- wherein the type information include type [**R/W, WO, O-ROM, etc**] and location of the first area and the second area [**byte number and zone numbers indicated location**].

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Regarding claims 10, Yoshimoto also teaches:

- wherein an area of the data carrier having no associated type information in the type area comprises a rewritable area **[col. 5, lines 52 – 56, note that since all of the type area section could be rewritten with permission, part of the type area without specific designation could also be rewritten].**

Regarding claim 12, Yoshimoto teaches:

- A method of writing on a data carrier comprising the acts of: writing content in a first area of the data carrier **[col. 6, lines 12 – 20]; and**
- after the act of writing , in a type area in an unerasable way, type information type information that defines the first area as a read-only area; wherein the type area is different from the first area **[col. 6, lines 12 – 20, note that the zones could be altered (i.e. written) after copying the data, also note col.14, last line through line 15, line 2, which teaches that “the disk structure management table is provided at the head of the defect management region (at the head of the user zone”. Note that information at header is inherently un-erasable) in a type are (col.15, lines 1-2: “at the head of the defect management region (at the head of the user zone)”) which is different from said first area (as noted above, the first area corresponds to O_ROM in figure 20].**

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshimoto in view of Shigemori [US 6,125,089].

Regarding claim 5, Yoshimoto teaches:

- The data carrier as in claim 1 that contains type information

However, Yoshimoto does not teach

- wherein type information is recorded by means of a frequency modulated wobble.

Shigemori teaches

- a data carrier wherein information is recorded by means of a frequency modulated wobble [**col. 1, line 22**].

It would have been obvious at the time of invention to one with ordinary skill in the art to combine the data carrier taught by Yoshimoto with the means of recording by frequency modulation wobble on the data carrier taught by Shigemori because it is well known in the art that optical disks recorded using FM wobble can be later demodulated to obtain time codes for each sector on the optical disk [**Shigemori, col. 1, line 23**]

Regarding claim 6, Shigemori teaches:

- a rewritable Compact Disc **[col. 1, line 17]** wherein the type information of the lead-in area of the optical disk encoded as Absolute Time in Pre-groove data **[col. 1, line 31]**.

It would have been obvious at the time of invention to one with ordinary skill in the art to combine the method of recording data in the lead-in area of the optical disk encoded as Absolute Time In Pre-groove data taught by Shigemori with the Compact Disk with type information taught by Yoshimoto because the Absolute Time in Pre-Groove area is used to encode many types of data including synchronization data **[Shigemori, col. 1, line 36]**.

Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshimoto in view of Shigemori, as applied to claim 5 above, and further in view of Endoh [US 7,280,461].

Yoshimoto in view of Shigemori do not teach:

- wherein type information is encoded as Permanent Information and control data.

Endoh teaches:

- wherein type information is recorded by mean of frequency modulated wobble **[col. 16, line 44]**, and information is encoded as Permanent Information and control data **[col.16, line 40]**.

It would have been obvious at the time of invention to one with ordinary skill in the art to combine disc wherein type information is recorded by means of frequency modulated wobble and information is encoded as Permanent Information and control data taught by Endoh with the data carrier taught by Yoshimoto in view of Shigemori because the several types of data can be coded as Permanent Information and Control data, such as Table of Contents data **[Endoh, col. 3. line 51 - 52]**

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshimoto in view of Willis [2004/0044567]

Yoshimoto does not teach:

- wherein content of the read-only area includes an advertisement.

Willis teaches:

- wherein content of the read-only area includes an advertisement **[\$0052, note advertisements are stored on a read-only memory.]**

It would have been obvious at the time of invention to one with ordinary skill in the art to combine the data carrier taught by Yoshimoto with read-only advertisements taught by Willis because other information (such as medium reading/writing parameters) could be stored in the read-only area.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshimoto in view of Lee et. al. [2004/0032813].

Regarding claim 13, Yoshitomo does not teach:

- wherein the recording act is performed by adding the type information in a wobble, and printing a wobbled groove on the data carrier including the wobble.

Lee does teach:

- wherein the recording act is performed by adding the type information in a wobble, and printing a wobbled groove on the data carrier including the wobble **[fig. 10, also see §0063]**.

It would have been obvious to one with ordinary skill in the art at the time of invention to combine the method taught by Yoshimoto with the printed wobble taught by Lee because it would allow good reproducing characteristics if the disc had more than one layer **[Lee, §0065]**.

Response to Arguments

Applicant's arguments with respect to claims 1 - 13 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

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reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no teaching, suggestion, or motivation to combine the references, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW J. SASINOWSKI whose telephone number is (571)270-5883. The examiner can normally be reached on Monday to Friday, 7:30 to 5:00, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hoa Nguyen can be reached on (571)272-7579. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ANDREW J SASINOWSKI/

Examiner, Art Unit 2627

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/HOA T NGUYEN/

Supervisory Patent Examiner, Art Unit 2627.